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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 214

BERNARD J. KORZEN, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, ET AL.,
Petitioners,

vs.

FORD MOTOR COMPANY,
Respondent,

vs.

UNITED STATES OF AMERICA,
Intervenor-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

PETITION FOR WRIT OF CERTIORARI.

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INDEX.

	PAGE
Opinions Below	2
Jurisdiction	2
Raising of Federal Question	2
Question Presented	3
Statement	3
Reasons for Granting the Writ	4
Conclusion	6
Appendix:	
A. Trial Court's Findings	8
B. Opinion Below	18
C. Conflicting Opinion	27
D. Conflicting Opinion	43
E. Conflicting Opinion	53

CITATIONS.

American Motors Corp. v. City of Kenosha, 356 U. S. 21 ..... 3, 4, 5

City of Detroit v. Murray Corp. of America, 355 U. S. 489 ..... 4, 5

Consolidated—Hammer Dry Plating and Film Co. v. Commissioner of Internal Revenue, 317 F. 2d 829 .. 5

Martin Co. v. State Tax Commission, 225 Md. 404, 171 A. 2d 479 5

McCulloch v. Maryland, 4 Wheat 316 5

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Petitioners, Bernard J. Korzen, County Treasurer of Cook County; Edward J. Barrett, County Clerk of Cook County; Daniel P. Ward, State's Attorney of Cook County and the County of Cook a Municipal Corporation pray that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois entered on January 22, 1964.

CITATIONS TO OPINIONS BELOW.

The Findings of Fact, Conclusions of Law and Final Decree of the Trial Court in Cook County, Illinois are unreported and are printed in Appendix A hereto, *infra* p. 7. The opinion of the Illinois Supreme Court printed in Appendix B hereto *infra* p. 18 is reported in 30 Ill. 2d 314.

JURISDICTION.

The judgment of the Illinois Supreme Court was entered on January 22, 1964. A petition for rehearing was denied on March 16, 1964. On June 13, 1964, Associate Justice Tom C. Clark extended the time for filing a petition for certiorari to and including July 14, 1964. The jurisdiction of the Court is invoked under 28 U. S. C. Section 1257(3).

HOW FEDERAL QUESTION PRESENTED.

The initial complaint filed in the trial court alleged that the property in question was exempt from state personal property taxes by virtue of the United States Constitution (Abst. 7). The trial judge decided that the property was exempt from personal property taxation by virtue of the Constitution of the United States and Section 19 of the Revenue Act of 1939 (ch. 120, sec. 500 Ill. Rev. Stat. 1957) (Abst. 88). On direct appeal, the Supreme Court of Illinois affirmed the decision of the trial court and decided that the doctrine of federal immunity precluded taxation of the property, but made no ruling on the applicability of the Illinois statutory provisions (*post* p. 26).

QUESTION PRESENTED.

Whether the Illinois Supreme Court erroneously decided that the property held by Ford Motor Co. under United States government contracts was immune from local taxation; whereas this Court has ruled in *American Motors Corp.* v. *City of Kenosha*, 356 U. S. 21, that property held under identical contract provisions is not immune from local taxation.

STATEMENT OF FACTS.

A complaint in Chancery for Injunction was filed by Ford Motor Co. (Abst. 1) seeking to enjoin the taxing officials in Cook County, Ill. from collecting personal property tax on property which was the subject matter of contracts (Abst. pp. 52-76) between Ford Motor Co. and the United States Government. The United States Government intervened in the case (Abst. pp. 17-20) claiming the property was theirs and therefore immune from state taxation. An answer was filed by the County taxing officials (Abst. 12) denying the property belonged to the United States Government.

The contracts and their specific provisions which formed the subject matter of the appeal are adequately described in the opinion of the Illinois Supreme Court. Suffice to state the taxing officials contended that the specific contract provisions of the government contract showed that Ford Motor Company was the owner of the property and therefore not immune from State taxation while Ford Motor Company contended that the United States Government was the owner of the property and therefore immune from state taxation. The parties entered into a stipulation of facts (Abst. 30) and after a hearing on the merits, the trial judge filed his Findings of Fact, Conclusions of Law and Final Decree (App. A) in which he restrained

the County of Cook taxing officials from collecting the personal property tax. On appeal the Illinois Supreme Court affirmed the decision of the trial judge.

REASON FOR GRANTING THE WRIT.

The Illinois Supreme Court in this case rested its decision squarely on the proposition of federal immunity from local taxation, as is evidenced by the citation of *McCulloch* v. *Maryland*, 4 Wheat 316, in the concluding paragraphs thereof (*post* p. 26). The opinion characterized the tax sought to be imposed as "a direct tax upon the property of the United States," and hence prohibited by the doctrine of federal immunity.

Petitioner relied below, as to the federal question, on this Court's decision in *American Motors Corp.* v. *City of Kenosha*, 356 U. S. 21. That was an appeal from the Wisconsin Supreme Court upholding a tax on tangible personal property held pursuant to United States government contracts with pertinent title-vesting and other related provisions identical to those in the contracts pursuant to which the tangible personal property herein sought to be taxed was held. The Wisconsin Supreme Court held that, notwithstanding the fact of title in the United States, the "owner" within the meaning of the Wisconsin tax statute was the contractor and hence there was no federal immunity (*post* p. 27).

This Court affirmed in a per curiam opinion with four justices noting their dissent for the reasons set forth in their dissenting opinions in *City of Detroit* v. *Murray Corp. of America*, 355 U. S. 489 (*post* p. 53). The *Murray Corp.* case denied federal immunity on the basis that the state law in that case (Michigan) permitted the taxation of a possessory interest in property; and that the imposition of such a tax was not an unconstitutional burden on the national

government within the current interpretations of *McCulloch* v. *Maryland*, 4 Wheat 316.

The affirmance of the *American Motors* opinion, over the same dissents as in the *Murray Corp.* case, therefore represents the decision of this Court that the local taxation of property held pursuant to contracts of the form here involved, does not contravene the federal immunity limitation, whether the local tax statute be one purporting to tax the "possessor" or purporting to tax the "owner."

The Illinois Supreme Court reached a contrary result by assuming that the *American Motors* case was a simple following of the *Murray Corp.* case and therefore must have been predicated on a Wisconsin statute taxing a possessory interest. In this misinterpretation they followed the reasoning of the Maryland Supreme Court in *Martin Co.* v. *State Tax Commission*, 225 Md. 404, 171 A. 2d 479. That the Wisconsin statute does not permit taxation of a possessory interest, and that the Wisconsin court's decision was based solely on the theory that the contractor was "owner" for tax purposes, is clearly set forth in the Wisconsin opinion (*post* p. 27). Furthermore, in Brief for Appellee on petition for rehearing, page 6, in the *American Motors* case in this Court, the city explicitly declared that it did not tax a possessory interest.

Therefore, this Court should correct the erroneous view of the Illinois Supreme Court that the *American Motors* case does not permit taxation of the subject property under an owner-taxing statute. The correct view is, moreover, the same theory as adopted by the U. S. Court of Appeals for the Seventh Circuit in an income tax context in *Consolidated-Hammer Dry Plating and Film Co.* v. *Commissioner of Internal Revenue*, 317 F. 2d 829 (*post* p. 43). In that case, the Federal Government sought to allocate moneys received by the taxpayer under partial-payment